IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.725/98

Radhey Shyam

Versus

Premshanker & Anr.

DATE OF ORDER :: 25/09/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Dr. P.C. Jain, for petitioner
Mr. S.K. Gupta, for respondent
Mr. Arun Sharma, Public Prosecutor for State

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Instant petition has been filed assailing the order dated 21st July, 1990 whereby learned trial Judge took cognizance against accused-petitioner for offence u/s.500 IPC and the Revisional Court upheld the order by dismissing the revision petition preferred by accused-petitioner vide order dated 24th May, 1994.

Facts which are relevant for adjudication of the dispute, are that complainant-non-petitioner Premshanker Singhal, who happens to be an Advocate, filed a Civil Suit No.7/89 before learned trial Judge impleading Chairman, RSEB & accused-petitioner as defendant, questioning the demand raised by Board on the alleged act of committing theft of electricity. In the suit, written statement was filed on behalf of erstwhile RSEB including present petitioner as well. In certain paragraphs, it was mentioned

that complainant-non-petitioner herein intentionally kept the meter to be defective and extracted electricity by committing theft. It was basically stated that plaintiff-non-petitioner has cleverly inserted open wire for extracting the electricity and by adopting this device committed theft. Pending suit, the non-petitioner with regard to averment made in the written statement considered that he has been imputed intentionally causing harm to him being a practising lawyer. Taking extract of those statements made in the written statement, a criminal complaint was filed by him before the competent court of jurisdiction for taking cognizance against accused-petitioner for offence u/s.500 IPC. Learned trial Judge taking note of extracts of written statement which was filed by petitioner in regular suit prima facie considered to be an offence to defame him u/s.500 IPC and took cognizance under order impugned dated 21st July, 1990 – against which petitioner preferred revision petition and his basic objection was that the written statement was filed in discharge of his official duty, as such learned trial Judge committed an error taking cognizance against him without seeking prior sanction required u/s.197 of Code.

One more contention advanced by him was that even otherwise there is a protection provided to him in regard to his act which is in good faith done under Section 82 of Electricity Supply Act,

1948. Since his both contentions were turned down, hence, he approached this court by filing instant petition.

After hearing counsel for parties, this court has gone through the complaint filed by non-petitioner and so also the extract of the written statement filed by the petitioner on behalf of erstwhile RSEB which has been quoted in Para 2 of the complaint, but nothing has been attributed, which may at all defame the non-petitioner or cast any imputation intentionally to harm him in any manner and from very perusal of complaint, it does not disclose the basic ingredients provided u/s.499 of the Code and as such, this court is of the opinion that there was no prima facie material available before learned trial Judge for taking cognizance of offence u/s.500 IPC against accused-petitioner. In view thereof, question which was raised by petitioner before the Court of Revision and so also before this court, does not require any consideration.

Consequently, the instant petition stands allowed. The order taking cognizance against accused-petitioner dated 21st July, 1990 and so also order of Revisional Court dated 24th May, 1994 are hereby quashed and set aside. Record be sent back to trial court.

[AJAY RASTOGI],J.